it was the total of the instalments outstanding at the date of determination which was claimed and the whole Court were agreed that it was penal in amount.

The point, however, has not been taken here or in the Court below so that the question of whether the sum claimed by the respondents may be in the nature of a penalty does not arise.

This appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Jag-Jit Singh; Hogan, Adams & Allan.*

Re ARBITRATION BETWEEN MOHAMED IBRAHIM & KOSHI MOHAMED

[C. A. (Rose C.J., Buttrose and Wee Chong Jin JJ.) October 25, 1962]

[Singapore — Civil Appeal No. 9 of 1962]

Arbitration — Interim "Order" of arbitrator — Whether "award" — Test to be applied.

Practice and Procedure — Application for enforcement of arbitration award — Whether by originating summons or motion.

"Award" is not a term of art; and the test as to whether an award has been made must depend upon whether the order in question amounts to a decision. The principle is "any form of words amounting to a decision of the questions referred will be good as an award. No technical expressions are necessary." *Russell* on Arbitration, 16th ed., p. 224 adopted.

COURT OF APPEAL.

L. A. J. Smith for the appellant.

H. A. Francis for the respondent.

Cur. Adv. Vult.

Rose C.J.: This is an appeal against a judgment allowing an application to enforce an award made by an arbitrator.

The arbitrator was appointed in pursuance of an arbitration agreement between Mohamed Ibrahim, the respondent in the present appeal, and one M. A. Koshi Mohamed. The award in question was made on the 25th September, 1961 and on the 7th of October, 1961 the said M. A. Koshi Mohamed died. By an order of Court made on the 4th of December, 1961 his widow was made a party to these proceedings.

The application to enforce the award was made by originating summons and at one stage in the proceedings it was contended that this procedure was wrong and that the application should have been made by motion. This point, however, was not pressed before this Court on appeal. I would observe that I see no reason to believe that the learned trial Judge was wrong in holding that an application for the enforcement of an award under the Arbitration Ordinance can properly be made by originating summons.

The point taken on appeal was that the order made on the 25th of September, 1961 was not really an award at all and that therefore no application for its enforcement could be entertained.

It is therefore necessary to consider the history of the matter.

Mr. A. P. Rajah, an advocate and solicitor, was appointed to act as arbitrator on the 2nd of September, 1960 to determine matters of dispute arising in connection with the partnership agreement between the respondent and the said M. A. Koshi Mohamed. A preliminary meeting was held on the 14th of October, 1960 and the first hearing took place on the 1st of August, 1961 when certain interim orders were made by consent.

A further hearing was held on the 16th of September, 1961, when learned counsel who was at that time appearing for the appellant asked for and obtained an adjournment to the 25th of September. On the 25th of September the arbitrator made the following order:—

"I ORDER that the business at the close of today's showing be handed over by the 1st partner to the 2nd partner (the 2nd partner becoming the sole proprietor of the business as from the end of to-day's showings).

Accounts have been rendered by the 1st partner up till 31st July, 1961. He has been running the business from 1st August, 1961 to 25th September, 1961 (both days inclusive). Mr. Francis asks that accounts for this period be filed before the next hearing at least one week before the hearing. Mr. Goho agrees.

My consent hearing fixed for 26th and 27th October, 1961. The accounts for period 1st August, 1961 to 25th September, 1961 to be filed on or before 19th October, 1961.

Falsifications and surcharges to be put in before the 26th October, 1961.

The issues raised in the 2 statements of the 1st and 2nd partners will be dealt with. Then the accounts will be gone into."

It is true that the arbitrator described his decision as an order and not an award but when cross-examined by learned counsel for the respondent in this Court he said: "I made an order and I intended it to be binding on the parties."

"Award" is not a term of art; and it seems to me that the test as to whether an award, be it final or interim, has been made must depend upon whether the order in question amounts to a decision. The principle is stated in the 16th edition of *Mr. Russell's* book on Arbitration at page 224: "any form of words amounting to a decision of the questions referred will be good as an award. No technical expressions are necessary."

It seems to me that the order of the 25th of September does amount to a decision of some of the questions referred and that, although the order is of an interim nature, it nonetheless should be regarded as an "award".

For these reasons I am of opinion that the appeal fails and must be dismissed with costs.

Buttrose and Wee Chong Jin JJ. concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Francis & Co.*

PUBLIC PROSECUTOR v. BOO CHEW HIA

[A. Cr. J. (Ali J.) November 14, 1962]

[Muar — Criminal Appeal No. 31 of 1962]

Criminal Procedure — Witness — Recall of — Criminal Procedure Code (Cap. 6), ss.35 and 425.

A witness may be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In this case as the trial Magistrate had exercised his powers under section 425 of the Criminal Procedure Code in permitting a witness to be recalled, there was nothing irregular about it, and the acquittal of the accused on that ground was wrong in law. The appeal must therefore be allowed, the order of acquittal set aside and the case must be retried before another Magistrate.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

R. Ramason for the respondent.

Ali J.: This is an appeal by the Public Prosecutor against the decision of the Magistrate at Batu Pahat whereby the respondent, who was charged with an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953, was acquitted and discharged without his defence being called.

The events in the course of the proceedings which led to the acquittal of the respondent were somewhat peculiar. The trial Magistrate having considered that it was necessary for a list of exhibits required to be prepared under section 34 of the Criminal Procedure Code to be produced allowed a prosecution witness to be recalled to give evidence of the list. Soon after this at the request of the respondent, who indicated that he wished to consult a lawyer, the trial Magistrate adjourned the case to the 28th of August, 1962, for continued hearing. When the case came up again before him the trial Magistrate acquitted the respondent holding, *inter alia*, that it was highly irregular for the witness to have been recalled. This, in my view, was surprising because before granting leave to recall a witness, the trial Magistrate must have considered whether by granting the leave the respondent would be prejudiced in his defence. The trial Magistrate was in effect exercising his power under section 425 of the Criminal Procedure Code and the irregularity or otherwise of the course which he adopts must be first considered before exercising that power. However, it was apparent that during the adjournment the trial Magistrate's attention was drawn to the decision of Murray-Aynsley C.J. which was discussed on page 598 of *Mallal's* Criminal Procedure, 4th edn. This decision seemed to have influenced the trial Magistrate into making the decision as he did. I need only say that the circumstances of the case before Murray-Aynsley C.J. were in no way similar to those in the present case. In the case under review the defence had not even commenced and as the respondent was not at the time represented there was no question of counsel having made any address. The law permits a witness to be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In the present case it could not have been an irregularity as far as the trial Magistrate was concerned as he had himself thought it necessary to exercise his power under section 425 of the Criminal Procedure Code. For the purpose of this appeal it is sufficient for me to say that the trial Magistrate was acting regularly when he allowed the witness to be recalled and the acquittal was therefore not a just decision of the case.

This appeal is, therefore, allowed, the order of acquittal set aside and the case be sent back for retrial before a different Magistrate.

Appeal allowed.

BALWANT SINGH v. TONG LAM & CO.

[O. C. J. (Rose C.J.) November 20, 1962]

[Singapore — Suit No. 1568 of 1961]

Landlord and Tenant — Subletting before 1949 — Condition against subletting agreed to by tenant in 1954 — Existing sub-tenants not affected — Rent receipts in English not conclusive against tenant knowing no English.

A tenant is not in breach of a condition against subletting when it has taken effect prior to his agreeing to that term.

ACTION.

J. Grimberg for the plaintiff.

H. E. Cashin for the defendants.

Rose C.J.: The plaintiff claims possession of certain premises from the defendants on the ground that in breach of their tenancy agreement they sublet part of the premises to three separate parties, namely, Lim Bock Seong, Tan Sue Eng and Ng Huat.

The plaintiff acquired in 1947 the premises in question, No. 629 North Bridge Road, together with Nos. 631, 633 and 635, the last named being a cinema and, apparently, the most important of the properties concerned. The acquisition in 1947 was a joint one between the plaintiff and his three brothers. By a family arrangement in 1951 the property vested in the plaintiff and his late brother, one Hira Singh. Now the plaintiff is the sole owner.

It is common ground between the parties that late in December 1948 or in January 1949 the present defendants became the tenants of No. 629 North Bridge Road, with the consent of the plaintiff and his brothers.

The plaintiff's position is that as early as 1949 there was a prohibition against subletting, which was signified by a note to that effect printed at the top of the form of receipt issued by Messrs. Gian Singh and Company, of whom the Singh brothers were the partners, from January 1949 onwards.